

The Burger Court Opinion Writing Database

NLRB v. Food Store Employees
417 U.S. 1 (1974)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 14, 1974

Re: 73-370 - NLRB v. Food Store Employees Local 347

Dear Bill:

Please join me.

Regards,

BB 13

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 2, 1974

Dear Bill:

Please join me in your opinion
for the Court in 73-370, NLRB v. FOOD STORE
EMPLOYEES.


WILLIAM O. DOUGLAS

Mr. Justice Brennan

cc: The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-370

Circulation: 5274

Reciprocal Links

National Labor Relations Board, Petitioner,
v.
Food Store Employees Union, Local 347, Etc. } On Writ of Certiorari to the
United States Court of Appeals for the District of Columbia Circuit.

[May —, 1974]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The National Labor Relations Board refused to include in a cease and desist order against Heck's Inc. a provision sought by respondent union, as charging party, that Heck's reimburse respondent's litigation expenses and excess organizational costs incurred as a result of Heck's unlawful conduct. The Board's stated reason was that "it would not on balance effectuate the policies of the [National Labor Relations] Act to require reimbursement with respect to such costs in the circumstances here." 191 N. L. R. B. 886, 889 (1971). Respondent prevailed, however, in enforcement and review proceedings in the Court of Appeals for the District of Columbia Circuit. That court enlarged the Board's order by adding a provision, paragraph 2(f), that Heck's "Pay to the Board and the Union the costs and expenses incurred by them in the investigation, preparation, presentation, and conduct of these cases before the National Labor Relations Board and the courts, such costs to be determined at the compliance stage of these proceedings." See 476 F. 2d 546 (1973). We granted certiorari to consider whether the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 20, 1974

file

MEMORANDUM TO THE CONFERENCE

RE: Nos. 73-1180 Tiidee Products v. N.L.R.B.
73-1423 Electrical Workers v. N.L.R.B.

These cases were held for Heck's, No. 73-370. They are petitions to bypass the Court of Appeals for the District of Columbia Circuit to review a Board order awarding litigation expenses and denying a "make-whole" order for losses suffered by employees. However, the Court of Appeals on April 25 last filed its opinion deciding the appeals. Therefore, any petitions for review here must now necessarily be addressed to the Court of Appeals' decision. Accordingly, Tiidee on May 10 filed a supplemental petition informing us of the Court of Appeals' decision and asking that we consider its pending bypass petition in No. 73-1180, a petition for certiorari to review the Court of Appeals' forthcoming judgment, stating "it is expected that such a judgment will be settled by the court shortly." Supp. Pet. p.2, n.1. Tiidee wants us to decide whether the Board's broad powers under Sec. 10(c) to fashion remedies includes power to order reimbursement of attorney's fees. Our opinion in N.L.R.B. v. Food Store Employees, No. 73-370, handed down Monday, expressly reserved that question (actually the broader question of award of "litigation expenses and excess organizational costs") at p. 6, n.9.

No. 73-1423, the Union's bypass petition, raises the separate question of whether the Board can issue a so-called "make-whole" remedy to compensate employees for the increased wages, etc. that they might have obtained but for the employer's obduracy. The Court of Appeals' opinion of April 25 held that, at least in this case, the Board's conclusion that that remedy would be wholly inappropriate was not "without substantial support in the evidence." The Union has not yet filed anything to tell us whether it will seek certiorari here to that part of the judgment.

RE: Nos. 73-1180 Tiidee Products v. N.L.R.B.
73-1423 Electrical Workers v. N.L.R.B.

These Tiidee and Food Store Employees cases reveal that the Board is experimenting with the appropriateness of these various forms of reimbursement as remedies to effectuate the purposes of the Act. I don't think I could say that such remedies are wholly unauthorized by Sec. 10(c). For that reason I'd let the Board continue its probing of the question. Accordingly I would deny both of these petitions, even if we decide to treat them as petitions from the yet-to-be-entered judgment on the Court of Appeals April 25 opinion. ✓

W.J.B. Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 6, 1974

73-370, NLRB v. Food Store Employees

Dear Bill,

I am glad to join your opinion
for the Court in this case.

Sincerely yours,

P.S.
P.

Mr. Justice Brennan

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 4, 1974

Re: No. 73-370 - NLRB v. Food Store Employees

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 2, 1974

Re: No. 73-370 -- National Labor Relations Board
v. Food Store Employees Union, Local 347, Etc.

Dear Bill:

Please join me.

Sincerely,



T. M.

Mr. Justice Brennan

The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

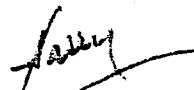
May 6, 1974

Re: No. 73-370 - NLRB v. Food Store Employees Union

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

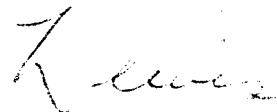
May 3, 1974

No. 73-370 NLRB v. Food Store Employees

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 6, 1974

Re: No. 73-370 - NLRB v. Food Store Employees

Dear Bill:

Please join me in your opinion for the Court in this case.

Sincerely,



Mr. Justice Brennan

Copies to the Conference